



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

1. The preliminary hearing Order should be affirmed.
2. Claimant testified he felt a pop in his right knee on March 30, 2001, as he was carrying materials down some steps at a job site. Claimant testified, in part:

I was finishing up a job on 23<sup>rd</sup> street and I was carrying materials down the steps, twisted to go back up stairs, and caught my leg and I felt a pop in my knee. I continued to work, because it had to get done. . . .<sup>1</sup>

3. After completing the job that he was working on, claimant returned to respondent's shop and left work early. By five o'clock that afternoon, claimant's knee was swollen and claimant could not walk. The next morning, claimant telephoned his counselor at Haskell Indian Nations University and was told to go to the Haskell medical clinic the first thing Monday morning, which was April 2, 2001.

4. Before going to the clinic on the morning of April 2, 2001, claimant advised one of respondent's owners, Mr. Bill [William] Knox, that he hurt his leg at work on Friday and that he was going to the Haskell medical clinic for treatment. After his medical appointment at the Haskell clinic, claimant took his work restrictions to respondent's owners and he again advised that he had injured his knee at work.

5. At the preliminary hearing, claimant introduced a document from the Haskell medical clinic dated April 2, 2001, which contained a history that claimant's knee popped when he was walking down some steps at work. That document reads, in part:

C/O R knee pain, diff. walking – began Fri, 3/30. Was walking down steps @ work & turned & knee “popped.” Not taking meds – stayed off knee over weekend. No previous knee injuries. Works as repairman – heating/cooling. Twisting injury. . . .

6. Respondent and its insurance carrier presented the deposition testimonies of William R. Knox and Bradley Blankenship, respondent's co-owners. Both Mr. Knox and Mr. Blankenship testified that they did not know that claimant was claiming he had injured his knee at work until either April 13 or 14, 2001, when respondent received a letter from claimant's attorney. They both were aware that claimant had injured his knee but they both

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<sup>1</sup> Preliminary Hearing, May 29, 2001; p. 7.

testified that claimant told them he had injured it in some other manner than now alleged.

7. The Judge observed claimant testify and, therefore, had the opportunity to assess his credibility. The Judge was persuaded by claimant's testimony and granted his request for benefits. At this juncture of the claim, the Board affirms the Judge's finding and conclusion that claimant injured his right knee in an accident that arose out of and in the course of employment with respondent. Claimant's testimony, coupled with the information contained in the Haskell clinic record, establishes that it is more probably true than not that claimant injured his knee at work and that on April 2, 2001, he gave respondent timely notice of the accident, as required by the Workers Compensation Act.<sup>2</sup>

**WHEREFORE**, the Board affirms the June 1, 2001 preliminary hearing Order entered by Judge Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2001.

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BOARD MEMBER

c: George H. Pearson, Topeka, KS  
Nathan D. Burghart, Topeka, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director

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<sup>2</sup> See K.S.A. 44-520.